

**RADIOACTIVE
and
HAZARDOUS MATERIALS
COMMITTEE**

**2004
INTERIM REPORT**



**LEGISLATIVE COUNCIL SERVICE
December 2004**

2004 APPROVED WORK PLAN
for the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

Committee Members:

Rep. John A. Heaton, Chair
Sen. Richard C. Martinez, Vice Chair
Rep. Donald E. Bratton
Sen. Mary Jane M. Garcia
Sen. Phil A. Griego
Rep. Manuel G. Herrera
Sen. Gay G. Kernan
Sen. Don Kidd
Sen. Carroll H. Leavell
Rep. Antonio Lujan
Rep. Pauline J. Ponce
Rep. Jeannette O. Wallace

Advisory Members:

Rep. Thomas A. Anderson
Sen. Clinton D. Harden, Jr.
Sen. William H. Payne
Sen. John Pinto
Rep. Avon W. Wilson

History

The radioactive and hazardous materials committee was created in 1979 by statute, Section 74-4A-9 NMSA 1978, to provide a means of coordinating information exchange and develop appropriate state actions in relation to the waste isolation pilot plant (WIPP) near Carlsbad. Over the years, the committee has heard extensive testimony on subject matter relating to the environment, including air and water quality, solid waste, ground water quality, mining, pipeline safety and other issues that require attention from the legislature in its deliberation of proposed environmental regulation.

Proposed Work Plan

The committee proposes to review the department of environment legislative and regulatory initiatives, including:

- assumption of primacy over the federal environmental protection agency's (EPA's) national pollutant discharge elimination system (NPDES);
- air quality and water quality de novo hearing process revisions;
- wastewater utility operators certification;
- proposed changes to septic tank regulations; and
- occupational safety and health standards for convenience stores.

Additionally, the committee proposes to hear testimony about the status of:

- WIPP and its federal Resource Conservation and Recovery Act permit modification requests before the department of environment;
- Los Alamos national laboratory's environmental compliance and proposed federal department of energy settlement with the state over legacy waste cleanup;

- Superfund or proposed listing of sites under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980;
- Underground storage tanks;
- Burn standards (garbage);
- Hazardous carriers; and
- De Novo hearings pursuant to other issues.

Finally, the committee proposes to hear testimony on the proposed nuclear fuels enrichment plant in Eunice, the effect on New Mexico communities of changes in EPA standards for various pollutants, including mercury and arsenic, and issues relative to extractive industries in the state.

2004 APPROVED MEETING SCHEDULE AND BUDGET

One one-day meeting in Santa Fe (June 8)
 One one-day meeting in Los Alamos (July 6)
 One two-day meeting in Carlsbad (November 4-5)
 One one-day meeting in Santa Fe (September 20)

TOTAL	\$14,000.00
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**MINUTES
of the
FIRST MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**June 8, 2004
Santa Fe**

The first meeting of the Radioactive and Hazardous Materials Committee was called to order at 10:20 a.m. on Tuesday, June 8, 2004, by Representative John A. Heaton, chair.

PRESENT

Rep. John A. Heaton, Chair
Sen. Richard C. Martinez, Vice Chair
Sen. Phil A. Griego
Rep. Manuel G. Herrera
Sen. Carroll H. Leavell
Rep. Pauline J. Ponce

ABSENT

Rep. Donald E. Bratton
Sen. Mary Jane M. Garcia
Sen. Gay G. Kernan
Sen. Don Kidd
Rep. Antonio Lujan
Rep. Jeannette O. Wallace

Advisory Members

Rep. Thomas A. Anderson

Sen. Clinton D. Harden, Jr.
Sen. William H. Payne
Sen. John Pinto
Rep. Avon W. Wilson

Staff

Gordon Meeks
Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Tuesday, June 8

Representative Heaton began the meeting by providing some background on the history and purview of the committee and by having committee members introduce themselves.

DEPARTMENT OF ENVIRONMENT LEGISLATIVE INITIATIVES

Ron Curry, secretary of environment, noted that the major piece of legislation the department of environment (NMED) will introduce during the 2005 legislative session is statutory authority to assume primacy for enforcement of the federal Environmental Protection Agency's (EPA) standards to certain surface waters, primarily storm discharges. He explained that New Mexico's assumption of primacy offers a number of advantages, including faster storm water discharge permit processing. These permits are required of many small businesses, contractors and some local governments. Mr. Curry also noted that New Mexico is the only state in EPA Region 6, which includes Louisiana, Arkansas, Oklahoma and Texas, without primacy.

Finally, Mr. Curry addressed concerns that such a program would be too costly by stating that research shows the program is cost the state an additional \$1 million to \$1.2 million, and that most of that cost would be to create additional jobs for permit writers.

Questions and comments from the committee addressed:

- permit fees going to the department rather than into the general fund; and
- the stringency of NMED standards in comparison to EPA standards.

Mr. Curry also briefly described several other bills the department will bring to the legislature. The first such bill relates to the regulation of water and utility operators. Mr. Curry explained that the current situation regarding water and utility operators amounts to an unfunded mandate from the federal government.

Mr. Curry also stated that the bills introduced last year concerning de novo hearings for both air quality and water will be reintroduced for the 2005 session. Tracy Hughes, general counsel for NMED, explained that the agreement between the parties involved in the bill regarding de novo water hearings that was in place for the 2004 session should still be in place for the 2005 session. She also said that the parties involved with the de novo air quality hearings will be meeting soon to work out some sort of compromise.

DEPARTMENT OF ENERGY WASTE RECLASSIFICATION

Representative Heaton began by providing some background on the classification of waste, explaining that there are different storage requirements for high- and low-level waste and that some low-level waste could contain high levels of radioactivity and vice versa.

Paul Detwiler, acting manager of the Waste Isolation Pilot Plant (WIPP), explained that there is some debate about where to draw the line between high- and low-level waste. He went on to note that low-level waste can simply be defined as waste that has a measurable level of radioactivity while high-level waste has more to do with its source and concentration of radioactive waste than with radiation measurements. For example, he explained that the material resulting from the reprocessing of nuclear fuel would be classified as high-level waste.

Mr. Detwiler went on to note that while the Department of Energy (DOE) has agreed not to ship or store high-level waste at WIPP, material from a number of storage tanks at the Hanford Reservation technically does not meet the criteria for high-level waste and, therefore, may be transported to and stored at WIPP.

Mr. Curry noted that this discussion began at an April energy summit where Governor Richardson asked for reclassification of materials that are appropriate to send to WIPP. Mr. Curry also noted that the language the federal government has used for reclassification of waste is likely not the best solution to the conflict between DOE and NMED.

Both Mr. Detwiler and Mr. Curry agreed that the DOE, WIPP and NMED must work together to seek solutions to the problems of high-level, low-level and transuranic waste

disposal.

WIPP RCRA PERMIT MODIFICATIONS

Mr. Curry provided the committee with a list of regulatory decisions pending before NMED that are of particular importance. He discussed the items on the list with committee members, noting the date each item was brought before NMED and the number of days that have elapsed since those dates. The committee expressed some concern over the length of time some items have been on the list with no decision. Mr. Curry said that he expects shorter permitting times in the future, as the reclassification of waste has pushed NMED's plans back a bit. He also noted that NMED plans to reinstate its DOE Oversight Bureau in Carlsbad. The DOE Oversight Bureau, Mr. Curry explained, will have full-time oversight of WIPP, which should improve communication and permitting times considerably.

However, Charles Lundstrom of NMED also noted that there is no definite time line on pending decisions, but that NMED has a number of new staff members and that they are working as quickly as possible.

MEETING SCHEDULE AND WORK PLAN

The committee discussed meeting dates, locations and likely agenda items for each date. Proposed meeting dates are July 6 in Los Alamos, September 20 in Santa Fe and November 4 and 5 in Carlsbad.

The committee adjourned at 12:35 p.m.

**Minutes
of the
SECOND MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**July 6, 2004
Los Alamos Research Park Main Conference Center
Los Alamos**

The second meeting of the Radioactive and Hazardous Materials Committee was called to order at 10:15 a.m. on Tuesday, July 6, 2004, by Representative John A. Heaton, chair.

PRESENT

Rep. John A. Heaton, chair
Sen. Richard C. Martinez, vice chair
Sen. Mary Jane M. Garcia
Sen. Gay G. Kernan
Rep. Manuel G. Herrera
Sen. Carroll H. Leavell
Rep. Antonio Lujan
Rep. Pauline J. Ponce
Rep. Jeannette O. Wallace

ABSENT

Rep. Donald E. Bratton
Sen. Phil A. Griego
Sen. Don Kidd

Advisory Members

Rep. Thomas A. Anderson

Sen. Clinton D. Harden, Jr.
Sen. William H. Payne
Sen. John Pinto
Rep. Avon W. Wilson

Staff

Gordon Meeks
Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Tuesday, July 6, 2004

Representative Wallace introduced Jim West, a member of the Los Alamos County Commission, and Rick Brake, director of operations at Los Alamos National Laboratory (LANL). Mr. West welcomed the committee to Los Alamos, noting that an informed public is a more confident one. Mr. Brake also welcomed the committee, noting that Director Pete Nanos could not attend and thanked the committee members for coming.

Representative Wallace also provided the committee with a brief history of the Los Alamos Research Park, noting that it was not LANL property but did include some partnerships

between the laboratory and private industry.

Representative Heaton had members of the committee and members of the audience introduce themselves.

Update on Agreement with the New Mexico Department of Environment

Beverly Ramsey, director of the Risk Reduction and Environmental Stewardship Division at LANL, and Joe Vozella, Department of Energy, provided the committee with a progress report regarding the agreement between the Department of Energy (DOE) and the New Mexico Department of Environment (NMED). They explained that a 270-page draft of the order has been compiled and is under review by the DOE and provided a time line for finalization of the order.

In response to questions from legislators, Mr. Vozella and Ms. Ramsey estimated that a draft of the agreement could be available for public viewing as soon as August 1 and that the agreement could be finalized by early 2005.

Ms. Ramsey also discussed LANL's work on environmental cleanup. She explained that laboratory staff has already been working diligently on many of the items contained in a corrective action order, rather than waiting for signatures on the order to finalize it. She also noted that the laboratory is in the process of implementing an environmental management system designed to reduce costs to the laboratory for corrective action by placing an emphasis on prevention of many of the issues contained in the corrective action order.

Pit Production

Jim Ostic, acting project leader of the pit production program at LANL, provided the committee with an overview and a status report of the program. He explained that pits are a part of the core of nuclear weapons and that questions about the reliability of pits over 40 years old have prompted federal authorities to begin production of a limited number of pits. Mr. Ostic went on to note that LANL has re-established the nation's ability to produce pits and that the laboratory is making the transition to being able to manufacture pits in small lots.

Mr. Ostic also outlined the number of pits LANL will try to produce over the next few years, noting that Congress is currently debating exactly how many pits are needed. He also explained that robust manufacturing of pits is the goal of the program and that LANL science and technology will lead to improvements in that process.

In response to questions from the committee, Mr. Ostic explained that LANL is the only facility in the United States currently manufacturing pits, that the amount of waste produced per pit manufactured is slowly being reduced and that the transuranic waste resulting from pit production is due to be shipped to WIPP.

Public Comment

Joni Arends, representing Concerned Citizens for Nuclear Safety, was recognized by the chair. Ms. Arends told the committee that inadequate information is being released to the committee. She cited mismanagement of perchlorates and waste water, the relationship between LANL and WIPP and the developers of the uranium enrichment facility near Hobbs.

Wildfire Modeling Demonstration and Briefing

Rod Linn, primary investigator for the wildfire modeling program at LANL, provided the committee with a demonstration of the wildfire modeling program being developed at the laboratory. He explained that predicting wildfire behavior is a complex problem with many interrelated variables, such as the type of fuels, weather, topography and physics. Mr. Linn also noted that the program is very useful for examining how and why a past fire behaved the way it did or for predicting what kind of forest management techniques will yield the best resistance to large fires, but not very useful for predicting how a fire that has already begun burning will behave. He explained that the computer models take too long to render to be of much use in those situations and that the forest service uses another formula that is relatively effective for such purposes.

Mr. Linn showed the committee computer-generated models of several fires to show how complex variables can change a fire's behavior. He also noted that some elements of the fire modeling program have proven useful for determining the dispersion of explosive or dangerous materials, such as so-called dirty bombs, into the air.

Department of Energy Citizens Advisory Board

Tim DeLong, chair of the Northern New Mexico Citizens Advisory Board (NNMCAB), provided the committee with an overview of the purpose and history of Department of Energy Citizens Advisory Boards, noting the importance of citizen involvement in DOE decisions. He also outlined the mission of the NNMCAB, emphasizing its goal of providing advice and recommendations to the DOE resulting from meaningful dialogue among the multicultural communities of northern New Mexico. Mr. DeLong also discussed several of the current topics NNMCAB is involved in, including NMED's corrective action order, changes in characterization of waste being transported to WIPP and material disposal areas at LANL.

Finally, Mr. DeLong discussed ways for members of the public to become involved with NNMCAB.

The committee approved without objection and motion by the chair to send a letter to the DOE to register concern over the delay of shipments from Los Alamos to WIPP.

The committee also approved without objection the minutes of the previous meeting.

Tour of Emergency Operations Center

LANL provided members of the committee with a tour of the new Emergency Operations Center. The center features secure and nonsecure areas and is the culmination of lessons learned

from the Cerro Grande fire. It features state-of-the-art communications equipment, vehicles and an emergency dispatch area, plus the capability to be sealed for up to three hours with 120 people inside. It also has enough water and electricity to remain self-sufficient for several days. Center operators also noted that the center is located outside any potential areas of concern for a number of potential crises.

The committee adjourned at 4:00 p.m.

**MINUTES
of the
THIRD MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**October 18, 2004
Santa Fe**

The third meeting of the Radioactive and Hazardous Materials Committee was called to order at 10:15 a.m. on Monday, October 18, 2004, by Representative John A. Heaton, chair.

PRESENT

Rep. John A. Heaton, chair
Sen. Richard C. Martinez, vice chair
Rep. Donald E. Bratton
Sen. Mary Jane M. Garcia
Rep. Antonio Lujan
Rep. Pauline J. Ponce
Rep. Jeannette O. Wallace

ABSENT

Sen. Phil A. Griego
Rep. Manuel G. Herrera
Sen. Gay G. Kernan
Sen. Don Kidd
Sen. Carroll H. Leavell

Advisory Members

Rep. Thomas A. Anderson
Sen. William H. Payne
Sen. John Pinto

Sen. Clinton D. Harden, Jr.
Rep. Avon W. Wilson

Staff

Gordon Meeks
Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Monday, October 18

Representative Heaton began by having committee members, staff and audience members introduce themselves.

NEW EPA STANDARDS' EFFECT ON NEW MEXICO

Ron Curry, secretary of environment, provided the committee with an overview of the Environmental Protection Agency's (EPA) new arsenic standard for drinking water. He explained that the EPA had recently lowered the arsenic maximum contaminant level from 50 parts per billion (ppb) to 10 ppb, and that the standard will apply to all community water systems and non-transient non-community water systems when it goes into effect in January 2006. Mr. Curry also noted that about 95 percent of the water systems in New Mexico have sampling results exceeding the 10 ppb standard. He explained that the new standards will mostly affect municipalities, and that many will likely need to put a waiver in place that allows them to exceed

the standards for a limited time period. Mr. Curry said that compliance with the new standards will be expensive for some communities. He also discussed the fact that several communities have background, or naturally occurring, arsenic above the 10 ppb standard, and that the New Mexico Department of Environment (NMED) is trying to work with the EPA office in Dallas to develop a course of action for those communities.

Questions and comments included:

- the deadline by which municipalities must adhere to the new standards;
- the nature of background arsenic levels;
- differences between ingesting arsenic through ground water versus surface water;
- the waiver program for communities with high levels of background arsenic;
- how arsenic gets into ground water;
- whether the EPA will grant long-term waivers;
- removal costs of arsenic from ground water;
- the nature of arsenic removal technology; and
- which New Mexico communities have high levels of arsenic.

Mr. Curry then introduced Sandra Ely of the NMED to discuss issues related to mercury pollution. She explained that while mercury is currently not a regulated pollutant, a draft of new EPA regulations is underway that will make it so. Ms. Ely went on to explain that New Mexico is among the states in the western U.S. with the highest levels of power plant mercury emissions. She pointed out that the emitted mercury settles in bodies of water, where it is ingested by fish, and that consumption of fish that have ingested mercury has been shown to cause health problems, particularly for pregnant women and their fetuses. Ms. Ely went on to note that while there are other sources of mercury emissions, such as incinerators, power plants account for about 80 percent of the mercury emissions in the area. She also pointed out that mercury emissions are more of a problem for the region as a whole than in any localized areas.

Mr. Curry completed his presentation by discussing the issue of the NMED seeking to assume primacy for enforcement of EPA standards regarding certain surface waters. He explained that New Mexico is one of only five states, and the only state in EPA Region 6, which includes Texas, Oklahoma, Arkansas and Louisiana, that does not currently have primacy for the EPA National Pollution Discharge Elimination System. Mr. Curry listed a number of advantages to New Mexico taking control of primacy, including having contractors who require permits being able to deal with offices in Santa Fe rather than Dallas. He went on to note that the program will cost between \$1.3 and \$1.4 million and will require about 15 new NMED employees.

Questions and comments included:

- the source of funding for the program;
- whether the program will require both statutory changes and budgetary appropriations;
- whether New Mexico will receive federal funding for taking over a federal program; and

- advantages of less time for permit approval versus paying more for permits in order to pay for the primacy program.

DE NOVO HEARINGS: PROPOSED REVISIONS

J.D. Bullington of the Association of Commerce and Industry and Luis Rose, an attorney with Montgomery and Andrews, provided the committee with some background regarding de novo air and water hearings. They explained that applicants from various industries must apply for permits to discharge pollutants into the air and/or water, and that an NMED division director makes the first decision on approval of the permit. Mr. Bullington and Mr. Rose went on to explain that after initial review of a permit application by NMED, the secretary may find that the application is significant enough to require a full public hearing. After the department action on the application, any objector may appeal that decision to the Water Quality Control Commission (WQCC) or the Environmental Improvement Board (EIB), which then must schedule another full public de novo hearing. A de novo hearing means that more information, testimony and discovery are allowed, as in any quasi-judicial proceeding, as if the first public hearing was never held. Most appeals under other state laws in regulatory matters are based only on the record of a first public hearing. A second de novo hearing can involve costly legal fees for both NMED and the industry seeking the permit. The witnesses asked that the legislature amend the law to make the appeal to the EIB or the WQCC based on the record and not de novo.

Mr. Bullington and Mr. Rose explained that negotiations are underway to try to eliminate de novo air and water hearings; an agreement was reached last year on water and a bill proceeded through the house and into the senate, where it died before the end of session. They explained that while negotiations regarding air hearings have stalled, a renewed agreement regarding water hearings could be forthcoming. Mr. Bullington and Mr. Rose discussed several of the issues that have arisen during negotiation of an agreement regarding water hearings, most notably the issue of how to provide adequate notice to interested parties before the first meeting between an applicant and the NMED and how best to disseminate that notice.

Joni Ahrends of Concerned Citizens for Nuclear Safety stated that members of the environmental community would prefer to negotiate on proposed legislation first, then on regulations that come as a result of legislation. She noted that with regard to the water de novo hearings, several of the loopholes that existed in the bill that was introduced during the 2004 legislative session had been addressed but that more robust notification requirements are still necessary.

Sophia Martinez of Concerned Citizens of Wagon Mound and Mora County noted that the issue of de novo hearings is very important to small communities, and that while only five or six de novo hearings have ever been held, they remain an effective way for small communities to be heard. She also suggested that notice through newspapers would not reach many citizens in counties such as Mora, where few citizens receive Albuquerque or Santa Fe newspapers.

Questions and comments included:

- the ability of small communities to receive notice and get experts together to testify at

- a hearing;
- the legal resources available for small communities from the New Mexico Municipal League and the Environmental Law Center;
- the possibility of local elected officials notifying citizens in small communities; and
- the costs of de novo hearings.

VOLUNTARY EMISSIONS REDUCTIONS

Sonia Phillips and Frank Pruger of Xcel Energy Corporation provided the committee with a brief discussion about Xcel Energy, which they noted has power plants in the Minneapolis-St. Paul area, Denver, New Mexico and Texas. They also provided the committee with an overview of their proposal for voluntary emissions reductions legislation, which they indicated has had success in Minneapolis and Denver. Mr. Pruger explained that his company has found that it is faster and less expensive for power plants to voluntarily reduce their emissions instead of waiting for the EPA to force them to do so, and that the savings can ultimately be passed on to customers. He went on to note that Southwest Public Service Company, a subsidiary of Xcel, has developed technology that would also help control mercury emissions from their plants. Finally, Mr. Pruger explained that Xcel plans to introduce legislation in both Texas and New Mexico to allow his company to move forward with voluntary emissions reductions, adding that if Texas does not approve its proposal, Xcel would not pursue its plans in New Mexico.

Questions and comments included:

- whether New Mexico consumers would wind up paying for improvements made to power plants in western Texas;
- customer involvement in Xcel's decision-making process; and
- why costs are lower if power plants make voluntary changes as opposed to being forced to do so by the EPA.

John Bartlit of New Mexico Citizens for Clean Air and Water noted that his group is interested in working with Xcel to improve emissions from power plants in the region.

ON-SITE LIQUID WASTE ISSUES

Anna Marie Ortiz and Dennis McQuillan of NMED provided the committee with an overview of liquid waste issues in New Mexico. They explained that septic systems across New Mexico are contaminating ground water and provided the committee with a summary of NMED's program to address the contamination. Ms. Ortiz and Mr. McQuillan noted that one of the major facets of NMED's program to address liquid waste is a proposed rewrite of the regulations regarding it. They provided the committee with a brief overview of the proposed rewrite, noting that it would require new home builders to install advanced septic systems in homes that meet certain criteria.

Ms. Ortiz and Mr. McQuillan also provided the committee with maps showing where ground water and surface water have been contaminated by septic systems in New Mexico, as well as where aquifers are most sensitive to contamination on a county-by-county basis.

Questions and comments included:

- how soil types figure into criteria for which new homes will require advanced septic systems;
- the cost of advanced septic systems;
- the ability of NMED to find permits for homes with septic tanks; and
- grandfathering older septic systems.

Ryan Smith of Las Cruces Environmental Systems, Inc. told the committee about his company's superior liquid waste disposal system and said that although the system has been certified by NMED to meet all requirements for treating liquid waste, some NMED employees are directing customers away from his product to other businesses. Committee members commented that it is inappropriate for NMED to favor any business over another as long as the business meets legal requirements and that the secretary will be expected to correct any problems in his agency relative to favoritism.

Fernando Martinez of NMED provided the committee with information requested earlier in the day regarding arsenic contamination in New Mexico's ground water. He produced a time line for public water system compliance with the EPA standards; discussed exemptions and variances that public water systems may apply for; and provided the committee with a list of the municipalities and public water systems in the state that have arsenic sampling results equal to or greater than the 10 ppb standard.

Questions and comments included:

- the costs of compliance with arsenic standards; and
- the viability of point-of-use water filtration systems versus cleanup of entire water systems.

PIPELINE SAFETY PROGRAM STATUS REPORT

Bruno Carrera, general manager of the Pipeline Safety Bureau of the Public Regulation Commission, provided the committee with a report on the progress made since the implementation of the Pipeline Safety Fund. He explained that a bill passed during the 2004 legislative session created the fund, which helps pay for the operations of the Pipeline Safety Bureau by collecting fees on intrastate pipeline system use. Mr. Carrera noted that hearings have been held across the state and rules have been adopted on how to implement the fund; the pipeline inspector job description has been rewritten; and pipeline safety engineer candidates are in the process of being interviewed. He also outlined programs that have allowed underground pipeline locating equipment to be purchased and that have improved public education and outreach.

Questions and comments included the required educational background of pipeline

inspector candidates.

The minutes from the July 6, 2004 meeting were approved as submitted.

BELEN NATIONAL GUARD ARMORY CLEANUP

Delano Garcia of the Department of Military Affairs provided the committee with a brief summary of the situation regarding cleanup of manganese at the Belen National Guard Armory. He explained that a NMED requirement to remove manganese from the ground beneath the armory has resulted in the Department of Military Affairs being unable to transfer the land the armory is on to the city of Belen, as well as costing the department close to \$500,000 in attempts to remove the manganese. Mr. Garcia went on to explain that the manganese exists in the ground water as a result of remediation of leaks from underground petroleum storage tanks. The cleanup process resulted in chemical reactions that precipitated manganese from the solution in the soil. However, he noted that manganese is difficult for humans to ingest and cited studies that show it is not a health hazard and that EPA does not regulate the substance or require the state to regulate it.

Tracy Hughes and Jim Davis of NMED discussed the manganese standards with the committee. They also noted that they have been working with the Department of Military Affairs to try to reach an agreement on how to approach the WQCC to eventually revise the standard.

Questions and comments included:

- the need for risk-based decisions;
- how manganese is not a health risk;
- the authority of the WQCC;
- the occupational hazard of manganese from inhalation only;
- New Mexico exceeding EPA standards for manganese;
- trace amounts of manganese required in the human diet; and
- the naturally occurring presence of manganese in soil.

The committee adjourned at 5:05 p.m.

**MINUTES
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**November 4-5, 2004
Environmental Monitoring and Research Center
Carlsbad**

The November 2004 meeting of the Radioactive and Hazardous Materials Committee was called to order at 10:15 a.m. on Thursday, November 4, 2004, by Representative John A. Heaton, chair.

PRESENT

Rep. John A. Heaton, Chair
Sen. Richard C. Martinez, Vice Chair
Rep. Donald E. Bratton
Sen. Mary Jane M. Garcia
Sen. Gay G. Kernan
Sen. Don Kidd (11/4)
Sen. Carroll H. Leavell
Rep. Antonio Lujan
Rep. Pauline J. Ponce
Rep. Jeannette O. Wallace

ABSENT

Sen. Phil A. Griego
Rep. Manuel G. Herrera

Advisory Members

Rep. Thomas A. Anderson

Sen. Clinton D. Harden, Jr.
Sen. William H. Payne
Sen. John Pinto
Rep. Avon W. Wilson

(Attendance dates are noted for those members not present for the entire meeting.)

Guest legislator:

Senator-elect Vernon Asbill

Staff

Gordon Meeks
Liz Holmes

Guests

The guest list is in the original meeting file.

Representative Heaton introduced the newly elected senator from Carlsbad, Vernon Asbill. The chair welcomed everyone and explained the history of the committee and its mission. He also gave an overview of the Carlsbad area and its attractions, economy and current issues. Committee members then introduced themselves.

Outgoing Senator Kidd expressed appreciation to his colleagues on the committee and the work he shared with them during his service. Committee members recognized Senator Kidd.

Carlsbad Mayor Bob Forest was introduced, and he made some brief remarks about the community.

Mayor Forest continued describing the community, referring to the Waste Isolation Pilot Plant (WIPP). Mayor Forest said that it only had an approval rate of 30 percent of the community in 1975, and now enjoys a 90 percent approval rating. He mentioned the potential for a PIT manufacturing facility, a fuel rod enrichment plant and other nuclear industry-related opportunities in southeastern New Mexico, which is a corridor for radioactive waste research and management where people work together and collaborate for economic development. The country's best kept secret is New Mexico, and southeast New Mexico is the state's best kept secret. WIPP is the best thing that has happened to southeast New Mexico, he concluded.

Representative Heaton described the host location, the Carlsbad Environmental Monitoring and Research Center (CEMRC).

CARLSBAD ENVIRONMENTAL MONITORING AND RESEARCH CENTER

Jim Conca, director of the center, told the committee that CEMRC will be bidding on the contract to replace the Environmental Evaluation Group and is working with the Carlsbad Center for Excellence for Hazardous Materials Management (CEHMM). He explained the history of monitoring at the WIPP site, including the Gnome project (underground nuclear testing for mining) prior to WIPP. Some radioactive particulates got into the atmosphere from a test explosion in 1964, before WIPP was established, and this previous escape of radioactive particulates needs to be detected as separate and distinctive from any potential release from WIPP in order to detect any potential WIPP radioactive leaks.

He said the center also does whole body scanning for detection of nuclear residue. The sensitivity of equipment at the center can detect if a person is from the Ukraine, as a result of the release of radioactive material in Chernobyl during the 1980s. It can also detect nuclear residue from tobacco smoking and distinguish it as a source distinct from other radioactive releases. The center is also documenting nuclear residue in emergency responders that have to respond to a dirty bomb.

The mission of the center now includes research contracts under the federal Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

The center will be working on training responders to deal with the detection and response to incidents involving dirty bombs, e.g., radiation dispersal devices. These are conventional bombs that disperse uranium. They are considered weapons of mass destruction in that they can cause extensive economic disruption. The first people on the scene of an incident involving these bombs are local police and fire personnel. The center will be training these first responders. He then went into some detail about the technical aspects of dirty bombs and the response to their detonation. The effects of dirty bombs are similar to radioactive waste cleanup.

Questions and comments included:

- vulnerability to dirty bombs;
- the role of the center in the cleanup of Iraq; and
- the history of the center.

CENTER FOR EXCELLENCE FOR HAZARDOUS MATERIALS MANAGEMENT

Bill Bartlett, director of the CEHMM, told the committee that the center is a recently formed nonprofit in Carlsbad for the research and development of ways to improve the management of hazardous materials internationally. Mayor Forest initiated the idea for this center in 2003 based on his appreciation of the regional resources available, such as the national laboratories, educational institutions, WIPP, the mining industry, the oil and gas industry and government organizations involved in dealing with hazardous materials. This September, he said, the federal Department of Energy (DOE) made a grant to the newly formed CEHMM. This grant will fund the center's research in repository science and environmental monitoring, development of an information resource center, education and other research. The center will be hiring professional staff with expertise in safety, environmental law, risk assessment and basic sciences.

Questions and comments included:

- the advisory committee of universities and industries working with the center;
- the pipeline explosion a few years ago that resulted in a grant of \$12 million for hazardous materials training;
- bio-diesel opportunities;
- the size of staff; and
- how staff composition of employees or independent contractors may pose a risk of conflict of interest.

The committee approved the minutes of the previous meeting.

ENVIRONMENTAL JUSTICE HEARINGS

Derreth Watchman-Moore, deputy secretary of environment, introduced herself and summarized the department's efforts to address environmental justice. She said the department held four meetings and that about 80 people attended each meeting. The meetings lasted for about eight hours with the intention to assist the public in participating in the environmental decision-making process. The meetings were held in response to a memorial asking the department to focus on grassroots efforts. The hearings were translated into Spanish and Navajo. A major concern that emerged was the adequacy of public notice when the department is considering permit decisions. Many people do not know about the implications of a decision for their community and are never informed of the project. People brought these concerns and many others, such as roads and education, to the hearings.

Questions and comments included:

- how do neighborhoods and communities come forward with adequate technical expertise or legal representation;
- the issue of fairness as it relates to the location of controversial projects in poorer communities;
- the department's approach for getting adequate resources to communities for their participation;
- the potential for dedicating personnel, perhaps ombudsmen, in the agency to work with communities;
- trust; and

- the need for expediting the permit process for economic development objectives.

WASTE ISOLATION PILOT PLANT STATUS

Paul Detwiler, director of the Carlsbad Field Office of the Department of Energy, discussed the shipment of drums from the Idaho National Energy Laboratory (INEL) that were not qualified to be placed at WIPP. The New Mexico Department of Environment (NMED) issued a compliance order against WIPP that carries a fine of \$2.4 million. He explained that the problem is one of accounting for the drums in the waste stream. He said the contractors have to better monitor the process of drum consolidation and repackaging.

Mr. Detwiler explained that the Hanford, Washington, Department of Energy facility uses the Environmental Protection Agency's (EPA) process of waste characterization that involves two waste streams and three audits, but that not all these audits were complete. The NMED attended all the audits, but the EPA did not. EPA only looked at the debris procedures, not for solids. NMED incorrectly assumed that EPA approved the solids process. But there had been no formal approval for the solids. There were 10 to 20 audits in process at the time, he testified, and communications broke down. To avoid this problem in the future, he suggested that the tracking process be formalized.

Questions and comments included:

- the nature of "solid wastes" and an explanation of the characteristics of the waste categories;
- the location of the improperly shipped drums;
- the receipt of more shipments per day than there is room to store them above ground;
- the condition of sludge at Hanford;
- the definition of "high-level" waste and the need for re-categorizing radioactive wastes—the terminology no longer reflects the nature of the different waste characteristics;
- formalities and bureaucratic process compared to the substantive characteristics of waste processing and disposal;
- the status of the central characterization project;
- the need for establishing central control of waste characterization at WIPP;
- potential outcry of the public over mistakes like this;
- cost estimates of characterization and confirmation through the life of WIPP; and
- Texas' proposal to locate a CCF in Texas.

At this point, a number of questions were directed to Ron Curry, secretary of environment, who was present in the audience. A CCF seems to be a characterization and confirmation facility for the waste stream destined for WIPP. The central idea of the questions to Secretary Curry was, "Wouldn't it be better for New Mexico to have a CCF located in New Mexico to give the state more control and regulatory authority over the waste stream?" Secretary Curry said that the idea has potential and that NMED is willing to consider it.

Questions and comments included:

- potential savings of \$4 billion to expedite and improve the efficiency of the characterization and confirmation process;
- whether the INEL waste problem could have been avoided if a CCF were located at WIPP or closer to Carlsbad; and

- how the cost per drum disposed is computed.

Secretary Curry told the committee that the recent events associated with the mistake by INEL has been an "interesting exercise". He said that INEL has had problems in the past with shipments. The problem lies in improper handling of paperwork by the INEL contractor. He was confident that negotiations with INEL over the penalty will be fruitful. He told the committee that his general counsel has said that NMED has the authority to fine the permittee, WIPP, for the problem.

He explained that the incident with the Hanford shipment falls within the domain of EPA rather than NMED. He elaborated that NMED feels WIPP was told specifically by EPA that those drums were not certified and should not have been accepted. The DOE should have notified NMED, not EPA, and DOE should have also notified its contractors at WIPP, which it did not. NMED ended up notifying the WIPP contractors, not DOE. The DOE management in Washington has not complied with its obligations. He concluded that DOE is not communicating.

Questions and comments included:

- how the "WIPP summit" has been postponed or canceled;
- communications between EPA and the Carlsbad Field Office;
- the status of the RCRA permit; a permit modification request is before NMED based on WIPP's desire to change some waste that has formerly been classified as high-level waste that, after investigation, appears to be transuranic (TRU) waste, for which WIPP was built to accept;
- further discussion of the need for restructuring the way that radioactive waste is classified;
- whether Congress could trump the permit modification process based on essentially a mislabeling of waste as high-level simply because of the source of the waste and not its nature, which is TRU;
- whether a definition change would change the criteria;
- the schedule for a Class 3 permit modification;
- the lack of institutional memory in DOE-Washington due to staff turnover;
- the role of the National Academy of Sciences;
- how redefining radioactive wastes could screw up contracts and policies adopted based on the existing definition scheme;
- the notice of deficiency on the permit modification request for remote handled waste and schedule for decision;
- that blame to DOE for the distractions that have disrupted the process;
- the adequacy of resources provided to NMED by DOE; and
- the difficulty of dealing with moving targets put up by the DOE headquarters in Washington; Secretary Curry said he wants more clear, consistent information on positions and policies that DOE frequently changes radically.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

Secretary Curry told the committee that New Mexico is one of five states that does not have primacy from EPA to enforce the National Pollution Discharge Elimination System (NPDES). He said that when the villages of Pecos and Espanola were fined under NPDES, they had to deal with the Dallas EPA office, which cost more money and resources than would have

been the case if they had dealt with NMED instead. He also cited examples in Los Alamos National Laboratory (LANL). He said the state needs control over its surface waters, and that the Legislative Finance Committee agrees with NMED that the state should receive primacy. He said that business has expressed general concern that NMED is moving too rapidly. A committee has been established to work on putting a proposal together for the 2006 session that will provide for state primacy that will be no more stringent than the federal rules as they exist today, without the regulatory rollbacks proposed by the Bush administration.

The secretary said that the estimated cost for NMED to assume primacy is \$1.14 million, 40 percent of which he would like to obtain from permit fees spread across the estimated \$2,000 permit holders. He explained that NMED is always committed to talking to affected people. The primary affected interests are industry, mining, municipalities and agriculture. The negotiating group will be chaired by Surface Water Bureau Chief Marcy Leavitt.

At the invitation of the chair, members of the audience who had a stake in the outcome of the NPDES primacy made brief remarks.

Randy Traynor, New Mexico Homebuilders and National Association of Office Parks, said that his clients are interested in talking with NMED because EPA has played the "bad cop" to NMED's potential "good cop". But, he said, NPDES applies to all construction sites. New Mexico has more than 10,000 of construction sites now. He said the state now has to comply, so the question is whether the state should take it over, not whether compliance standards will be weakened. EPA will always have oversight. Neither the fees or the standards can be waived.

Copies of the New Mexico Municipal League's conditional endorsement of the idea were passed out and appreciation was expressed for NMED forming a committee to negotiate the proposal. However, Mr. Traynor said he dealt with NMED for seven years on liquid waste issues, and that NMED was not honest in those discussions. He faulted NMED's lack of communication.

Mike Bowen, executive director of the New Mexico Mining Association, said he does not oppose the proposal yet, but that he has concerns. He is particularly concerned that existing permits could end up with more stringent enforcement. He is concerned about the unfriendly makeup of the Water Quality Control Commission and the potential for it to exceed its authority under whatever legislation might be enacted to acquire primacy from EPA. He said he wants a cap on the amount NMED is allowed to charge for fees. He concluded by saying he wants to see the whole package before he could endorse the idea.

Sharon Lombardi, director of the Dairy Producers of New Mexico, said that her organization is subject to several segments of the NPDES program as it is administered by EPA. She said the livestock regulations would affect her members because dairies are defined as livestock operators. The dairies are already permitted for ground water discharges. NPDES would require another permit for the same operation. She said her organization would like to see

all permits required for dairies unified under one administrative mechanism. If the permit process is not done right, it is a nightmare.

Debbie Hughes, director of the Association of Conservation Districts, said that the list of impaired streams, which triggers certain standards for discharges, is not based on scientific data. Rather, it is based on how much money is brought into the state by the number of listed streams. She illustrated her point by telling the committee that NMED has listed arroyos as impaired. Playa lakes, which are ephemeral, isolated bodies of water created from runoff and snow melt, were once listed as navigable waters, she contended. She said that contrary to the secretary's argument for New Mexico having primacy over its surface water, NMED gave a grant for watershed restoration to Purdue University in Indiana.

Questions and comments from the committee included:

- how NMED taking over the regulatory role from EPA would be like a turnkey contract;
- that there are no grants from EPA for primacy assumption to pay for the costs of administration;
- the argument that the devil you know is better than the one you do not;
- how the \$1.5 million fine against the village of Pecos was reduced to \$28,000 as a result of the intervention by NMED;
- NMED wanting to administer another tax to take control away from those that have to pay the tax;
- how NPDES is contrary to the need to make New Mexico more business-friendly in order to create the jobs the governor claims he wants;
- the adequacy of the Underground Storage Tank Fund to pay for 40 percent of the cost of administering NPDES;
- the oil and gas industry's compliance;
- fines used to leverage compliance as opposed to generating revenue;
- the number of employees needed for NPDES administration;
- the permit fee structure; and
- the willingness of the Dallas EPA administrator to come to Santa Fe to help explain the issue.

LOS ALAMOS

Tom Hargis from the Environmental Compliance Division of LANL spoke to the committee about the safety and security violations that caused the temporary shutdown of the lab.

Questions and comments included:

- public hearing on the consent order;
- compliments on negotiating the consent order;
- progress on restarting operations of the lab;
- the number of people affected by the disciplinary actions;
- LANL management contract status and the issuance of a request for proposals;
- the continuity of LANL operations;
- the potential pit facility and potential job losses if the pit facility is located in Savannah River rather than at Los Alamos;

- the nature of security breaches;
- the shift in mission from goal-oriented to process-oriented management; and
- the goal of completing cleanup by 2015.

PROPOSED LEGISLATION

Representative Heaton thanked the various presenters and participants in committee meetings for their attendance, presentations and interest in the committee's business.

Sonia Phillips, Xcel Energy Company, asked the committee for support of a bill on voluntary emissions reductions. She said that she intends to solicit sponsors for re-introduction of the bill this year, with some changes to reflect concerns last year from Senator Payne. She said that her company and others are still negotiating the bill. The governor and Secretary Curry are supporting the negotiations, she said, and she expects a negotiated bill to be ready before the session. She said the proposal will save customers money. Xcel will be seeking approval for a rate rider on customer bills to pay for the costs of emissions reductions up front. Xcel anticipates that EPA will be mandating these reductions in the near future, and Xcel is trying to get ahead of the anticipated regulatory action to save money. It is anticipated that if the industry waits in making the improvements, EPA's orders will end up costing the customer much more in the future. The generators to be improved are in Texas, but most of the customers are in New Mexico. EPA's mandatory reductions would be imposed on all stacks at a total cost of \$750 million. If the company can act ahead of EPA by just reducing emissions on the stacks that are making excessive emissions, Xcel can avoid having to replace each stack—the cost may be as little as \$150 million to \$250 million total.

A representative from the Lea County Electric Co-op said that his organization supports the proposed legislation.

Questions and comments included:

- how to ensure that New Mexico rate payers pay less than those in Texas;
- the EPA's policy; and
- the bill's applicability to all utilities.

Cindy Padilla and Clifford Stack, both with the Solid Waste Bureau of the NMED, presented a bill draft amending the Tire Recycling Act to make it a broader recycling program. They said that a steering committee is working to develop this recycling bill. The approach is to rewrite the Tire Recycling Act to address illegal dumping and abate illegal dumps. The bill will create a recycling advisory alliance and make grants for abatement. The primary goal of the bill is to improve the economics of recycling by focusing on the development of markets for recycled materials. The economic loop must be closed before recycling can succeed. A companion bill will also be prepared for a tax credit on recycling equipment and machinery.

They also reported on the fiscal year grants from the Tire Recycling Fund. Six projects were funded in FY 2005, with three still pending. Only two were funded in FY 2004. Many communities have expressed interest in doing more recycling. Markets are the key. The technology has improved significantly in the past 20 years, and there may be a new wave of recycling advances.

Questions and comments included:

- regional systems to assist small towns in consolidating materials and funding recycling facilities;

- the location of recycling facilities;
- the capacity for recycling;
- the secondary market for glass;
- economics for transporting material to recyclers;
- the cost of landfills as tradeoffs to recycling;
- increasing responsibility of waste generators by using manifests to track disposal of tires;
- the federal Healthy Forests Initiative and scope of the recycling bill to include organic material from watershed restoration projects;
- restrictions for civil engineering applications;
- dilution of the money in the Tire Recycling Fund for other purposes;
- enforcement and penalties;
- whether the biggest tire dumps have been addressed;
- the eligibility of Spanish and Mexican land grants to apply for money to close down illegal dumps;
- more incentives for the private sector to participate;
- the disposition of disposal fees collected by retail tire sellers and other generators;
- requirements of scrap haulers for tire transportation;
- illegal dumping caused by the high cost of waste disposal; and
- the notification to tire dealers about the proposed legislation.

The committee voted to endorse the legislation, with no one opposed.

Representative Heaton told the committee that he intended to again sponsor legislation reforming the de novo hearing process under the Water Quality Control Act and the Air Quality Act and asked for the committee's endorsements of those bills. The committee voted to endorse those measures, again with no opposition.

The committee discussed NMED bills that are expected to be introduced but, without hard copies, the committee did not endorse any of these bills. They include: certification for water treatment system operators; revision of the on-site liquid waste rules; restaurant inspection fee increases; hazardous waste fee increases; and appropriations for superfund site cleanup.

The department was asked to distribute copies of its bills as soon as they are available to each member of the committee.

NATIONAL ENRICHMENT FACILITY

Marshall Cohen, Louisiana Energy Services, spoke to the committee about the continuing importance of nuclear power in the international mix of electric power generation fuels and the need for enrichment of uranium for use in commercial power plants that use gas centrifuge technology. Nuclear-fueled power plants provide 16 percent of the world's electricity. The U.S. has one-fourth of the nuclear power plants in the world, accounting for 20 percent of the U.S. electricity and 20 percent of New Mexico's. The Nuclear Enrichment Facility (NEF) will be built in Lea County and have a design lifetime of 30 years. He went over some of the technical parameters of the plant and its technology. The technology has safely operated in Europe for a cumulative 70 years at three sites. He said that Louisiana Energy Services is a limited partnership to license, construct and operate the NEF. The general partners of Louisiana Energy Services are Urenco and Westinghouse Electric. Limited partners are Exelon, Entergy and Duke

Power. He said he expects operations to begin in 2009 and total construction to be complete by 2013. He explained the regulatory roles of the federal Nuclear Regulatory Commission and the NMED. The construction budget will be a little less than \$200 million and it will employ about 210 personnel when operating, with a total tax payment of \$150 million over the total 30-year life of the facility. Deconversion and disposal of the waste byproduct could employ significant personnel near the facility.

Questions and comments included:

- confidence in the nuclear industry;
- fuel originating from out of the United States;
- the success of the NEF in the Netherlands;
- working with the community colleges to train employees;
- recycling the waste stream;
- French practices;
- closure of the plant in the future;
- security measures;
- the need for energy self-reliance; and
- the benefits of nuclear energy to counteract global warming.

The committee instructed staff to compose letters to the NMED regarding:

- the request for broadening the representation of stakeholders in the NPDES negotiations to include the oil and gas industry, large retail establishments and more agriculture; and
- opposition to a permit modification for WIPP that deals with high-level waste.

The committee adjourned at 11:35 a.m.